

224.18-200 Interstate Compact on Air Pollution.

The Interstate Compact on Air Pollution is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON AIR POLLUTION

ARTICLE I

The party states to this compact hereby provide for the control of the interstate movement of air pollutants through the establishment of an interstate agency with powers to prevent, abate, and control interstate air pollution.

Each of the party states pledges to the other faithful cooperation in the control of air pollution which originates in one state and is injurious to human health or welfare, animal or plant life, or property, or which interferes with the enjoyment of life or property, in the other state.

The party states recognize that no single standard for outdoor atmosphere is applicable to all areas within the two party states due to such variables as population densities, topographic and climatic characteristics, and existing or projected land use and economic development. The guiding principle of this compact is that air pollution originating within a party state shall not be injurious to human health or welfare, animal or plant life, or property, or interfere with the enjoyment of life or property in the other party state.

ARTICLE II

As used in this compact "air pollution" means the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

ARTICLE III

The party states hereby create the Interstate Air Pollution Control Commission, hereafter called "the commission."

The commission shall consist of five commissioners from each party state, each of whom shall be a citizen of the state he represents, and one commissioner representing the United States Government who shall be appointed by the President of the United States, or in such other manner as may be provided by the Congress. The commissioners from each party state shall be chosen by the governor of such state in accordance with the laws of such state, as follows:

Two of the members from each state shall be chosen from appropriate state agencies, one of whom is the officer responsible for air pollution control, and one of whom is the director of state health department. Three other members shall be chosen, one of whom is experienced in the field of municipal government, one of whom is experienced in the field of industrial activities, and one of whom represents the public.

Except for the commissioner representing the United States Government and commissioners who shall be appointed by virtue of the offices which they hold and who may be commissioners during their continuance in office, the term of each commissioner shall be four years. However, the commissioner experienced in the field of municipal government, the commissioner experienced in the field of industrial activities, and the

commissioner appointed to represent the public shall be appointed, one for an initial term of one year, one for an initial term of two years, and one for an initial term of three years. As the term of each such initial appointee expires, the successor to fill the vacancy created by such expired term shall be appointed for a term of four years.

Vacancies on the commission shall be filled for the unexpired term in the same manner as appointments to full terms.

Each commissioner shall be entitled to one vote in the commission. No action of the commission shall be binding unless taken at a meeting in which a majority of the commissioners from each party state are present and unless a majority of those present at the meeting from each party state concur, but any action not binding for such a reason may be ratified within thirty days by the concurrence of a majority of the commissioners of each party state. In the absence of any commissioner, his vote may be cast by another commissioner of his state if such commissioner casting the vote shall have a written proxy in such form as may be required by the commission.

The commission may sue and be sued, and shall have a seal.

The commission shall elect annually, from among its members, a chairman and vice chairman. The commission shall appoint an executive director who shall act as secretary, and who, together with such other commission personnel as the commission may determine, shall be bonded in such amount or amounts as the commission may require.

Notwithstanding the civil service, personnel, or other merit systems laws of any of the party states, the commission shall appoint, remove or discharge, and fix the compensation of personnel necessary for the performance of the commission's functions. To the extent practicable, terms and conditions of employment for members of the staff of the commission shall be similar to those pertaining to comparable employees of the individual party states.

The commission may establish and maintain, independently or in conjunction with one or more of the party states, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect to old-age and survivors insurance, if the commission takes the steps necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in additional programs of employee benefits appropriate to afford employees of the commission terms and conditions of employment similar to those enjoyed by employees of the party states generally.

The commission may accept, or contract for the services of personnel and other services or materials from any state, the United States or any subdivision or agency of either, from any interstate agency, or from any institution, person, firm, or corporation.

The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services conditional or otherwise, from the United States, or any agency thereof, from any state or any subdivision or agency thereof, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The identity of any donor, the amount and character of any assistance, and the conditions, if any, attached thereto shall be set forth in the annual report of the commission.

The commission may establish and maintain the facilities necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

The commission may formulate and adopt rules and regulations and perform any act which it finds necessary to carry out the provisions of this compact, and may amend such rules and regulations. All such rules and regulations shall be filed in the office of the commission for public inspection and copies of such rules and regulations shall be filed in the office in each party state in which rules and regulations of state agencies are filed and shall thereafter be made available to interested persons upon request.

The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying recommendations adopted by the commission. The commission may issue such additional reports as it may deem desirable. These reports shall be available for public examination.

The commission shall have the authority to collect and disseminate information relating to its functions under, and the purpose of, this compact.

ARTICLE IV

The commission, may, whenever it finds air pollution which originates in one of the party states and has an adverse effect in the other party state, make a report recommending measures for the prevention, abatement, or control of the air pollution. Copies of the report shall be furnished to all existing state and local air pollution control agencies with jurisdiction over the sources of air pollution identified in the report. In preparing any report, the commission may confer with any appropriate national, regional, or local planning body, and any governmental agency authorized to deal with matters relating to air pollution problems and may conduct such hearings and investigations as it may deem appropriate. The commission may consult with and advise the states and local governments, corporations, persons, or other entities with regard to the adoption of programs and the installation of equipment and works for the prevention, abatement, or control of air pollution. For the enforcement of this compact the commission may also establish standards consistent with the provisions of this compact and any standards which may be adopted by the party states.

Before any report of the commission which specifically identifies a particular industrial or other installation, structure, or facility as a source of air pollution becomes final, the commission shall give the owner or operator of the installation, structure, or facility notice by certified mail of the anticipated adoption of such report and shall afford the owner or operator of the installation, structure, or facility not less than ten days after the mailing of such notice to file with the commission its written objections thereto. If no such objections are filed with the commission within such specified period, the report shall become final. If the objections are filed with the commission within the specified period, the commission shall afford the owner or operator not less than ten days from its receipt of objections to discuss with the commission the findings, conclusions, and recommendations of the report before it is finally adopted by the commission.

Within a reasonable time after the commission furnishes a report to the appropriate existing state and local air pollution control agencies pursuant to this article and, if the

recommendations made in such report for the prevention, abatement, or control of air pollution from a specific source or sources have not been implemented, or if the appropriate state or local air pollution control agencies have not taken sufficient action to prevent, abate, or control the air pollution, the commission may, after a duly conducted and constituted hearing, on due notice, issue an order upon any municipality, corporation, person, or other entity causing or contributing to interstate air pollution. At any such hearing evidence may be received and a finding made on whether, in fact, interstate air pollution exists and on the sources of such pollution. Any order may prescribe a timetable for the abatement or control of the air pollution involved. Any such order shall become final and binding unless a petition for review of the same shall be filed and prosecuted pursuant to the provisions of Article V of this compact.

In a party state, any court of general jurisdiction in any county in which the air pollution originates or any United States district court for the district in which the pollution originates shall entertain and determine any action or proceeding brought by the commission to enforce an order against any municipality, corporation, person, or other entity domiciled or located within such state and whose discharge of air pollution takes place within or adjoining such state, or against any employee, department, or subdivision of such municipality, corporation, person or other entity, and shall entertain and determine any petition for review pursuant to the provisions of Article V of this compact.

ARTICLE V

All hearings held by the commission shall be open to the public. At any hearing held pursuant to Article IV of this compact the party states, any agencies thereof, and any affected person, corporation, municipality, or other entity shall be entitled to appear in person or by representative, with or without counsel, and may make oral or written argument, offer testimony, or take any combination of such actions. All testimony taken before the commission shall be under oath and recorded in a written transcript. The transcript so recorded shall be made available to any member of the public or to any participant in such hearing upon payment of reasonable charges as fixed by the commission. No information relating to secret processes or methods of manufacture or production shall be disclosed at any public hearing or otherwise and all such information shall be kept confidential.

All hearings shall be had before one or more members of the commission, or before an officer or employee of the commission expressly designated to act as a hearing officer.

Any party state or person aggrieved by any order made by the commission shall be entitled to a judicial review thereof. Such review may be had by filing a verified petition in any of the appropriate courts referred to in Article IV, setting out such order and alleging specifically that said order is:

- (a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or
- (b) Contrary to constitutional right, power, privilege, or immunity; or
- (c) In excess of authority or jurisdiction conferred by this compact or statutes in implementation hereof; or
- (d) Without observance of procedure required by law; or

- (e) Not within the purposes of this compact; or
- (f) Unsupported by the weight of the evidence.

The petition for a review shall be filed within thirty-five days after receipt of written notice that the order has been issued. Written notice of the filing of a petition for review and a copy of said petition shall be personally served upon the commission. Any party or person filing a petition for review shall, within fifteen days thereafter, secure from the commission a certified copy of the transcript of any hearing held in connection with the issuance of the order, review of which is sought, and shall file the same with the clerk of the court in which the action or proceeding for review is pending. An extension of time in which to file a transcript shall be granted by said court in which such action or proceeding for review is pending for good cause shown. Inability to obtain a transcript within the specified time shall be good cause. Failure to file a transcript within the period of fifteen days, or to secure an extension of time therefor, shall be cause for the dismissal of the petition for review by the court or on petition of any party of record to the original action or proceeding. Where more than one person may be aggrieved by the order, only one proceeding for review may be had and the court in which a petition for review is first properly filed shall have jurisdiction.

The court may, for good cause shown, admit and consider additional evidence bearing upon the issue or issues before it.

No review of a commission order shall be had except in accordance with the provisions of this compact.

ARTICLE VI

The commission may establish one or more advisory and technical committees composed of such as the following: private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, and officials of local, state, and federal government, as it may determine, and may cooperate with and use the services of any such committee and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE VII

Nothing in this compact shall be construed to:

(a) Limit or otherwise affect the powers of either party state or any of their subdivisions to enact and enforce laws or ordinances for the prevention, abatement, or control of air pollution within their respective borders.

(b) Prevent or restrict either party state or any subdivision thereof in requiring or prescribing measures of air pollution prevention, abatement, or control in addition to those which may be required by either party state or the commission acting pursuant to this compact.

ARTICLE VIII

The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

Aside from such support as may be available to the commission pursuant to Article III, the cost of operating and maintaining the commission shall be borne equally by the party states.

The commission may meet any of its obligations in whole or in part with funds available to it under Article III of this compact, provided that the commission takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the commission makes use of funds available to it under Article III, the commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

The expenses and any other costs for each member of the commission shall be met by the commission in accordance with such standards and procedures as it may establish in its rules and regulations.

The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules and regulations. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE IX

(1) This compact shall become effective when enacted into law by any state in addition to the Commonwealth of Kentucky. Thereafter, this compact shall become effective as to any other state upon its enactment thereby.

(2) Any party state may withdraw from this compact by enacting a statute repealing same, but no withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governor of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of the withdrawal.

(3) Any order of the commission issued prior to the termination of this compact shall be enforceable thereafter by either party state in the same manner as though this compact were still in force except that any appropriate office or agency of the enforcing party state may act in the place and stead of the commission.

ARTICLE X

The provisions of this compact shall be reasonably and liberally construed. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision is declared to be contrary to the constitution of either state or of the United States, or the applicability thereof to any government agency, person, or circumstance is

held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected.

History: Created 1968 Ky. Acts ch. 141, sec. 1, effective June 13, 1968.

Formerly codified as KRS 224.510, effective June 13, 1968.